

Message Text

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43

ORIGIN L-03

INFO OCT-01 EUR-25 NEA-10 IO-13 ISO-00 EB-11 SCA-01 SSO-00

NSCE-00 USIE-00 INRE-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 A-01

SY-10 USSS-00 AID-20 CAB-09 COME-00 FAA-00 /154 R

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FM SECSTATE WASHDC

TO AMEMBASSY ROME IMMEDIATE

INFO USMISSION USUN NEW YORK

AMCONSUL MONTREAL

AMEMBASSY MOSCOW

AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY ATHENS

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E.O. 11652: GDS

TAGS: ICAO, ETRN

SUBJECT: ICAO AIR SECURITY CONFERENCE

REFS: (A) ROME 9059 (B) ROME 9063 (C) ROME 9056

1. DEPT CONCURS WITH DELEGATION'S ASSESSMENT OF NEED ON
TACITCAL GROUNDS TO PROVIDE SUPPORT TO SOVIETS. AMONG
THESE GROUNDS ARE, WE UNDERSTAND, TO AVOID DETAILED DISCUS-
SIONS ON SOVIET PROPOSAL AT THIS EARLY STAGE WHICH COULD
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RESULT IN POSTPONEMENT OF WORK IN INDEPENDENT CONVENTION;
NEED TO ACHIEVE EARLY PROGRESS SO THAT MOMENTUM OF EXISTING
CONFERENCE/ASSEMBLY SCHEDULING IS MAINTAINED; AND NEED
GENERALLY TO KEEP SOVIET SUPPORT FOR U.S. EFFORTS.

2. AS SUBSTANTIVE MATTER, HOWEVER, OUR PRELIMINARY VIEW OF REVISED SOVIET PROPOSAL IS THAT IT PRESENTS TWO POSSIBLE PROBLEMS. FIRST, WE READ SECOND SENTENCE, PARA 2, ART 8 NARROWLY AS NOTHING MORE THAN SIMPLE STATEMENT THAT IN A REQUEST FOR EXTRADITION LEGAL FORMALITIES REQUESTED STATE MUST BE MET. WHILE BROADER INTERPRETATION ALONG LINES DELEGATION SUGGESTS IS POSSIBLE FOR PROTOCOL PROPOSAL, WE BELIEVE SUCH READING COULD BE CONSIDERED AS STRAINED, TAKING INTO ACCOUNT LAST CLAUSE OF PRECEDING SENTENCE WHICH WOULD APPEAR TO COVER SUBJECT OF OUTRIGHT EXCEPTIONS TO EXTRADITION (RATHER THAN INDIVIDUAL EXCEPTIONS BASED ON LEGAL INSUFFICIENCY) AND IS LIMITED TO NATIONALS OF REQUESTED STATE. SECOND, ASSUMING REVISED TEXT IS ADEQUATE, IT WOULD, AS DELEGATION NOTES, REQUIRE IMPLEMENTING LEGISLATION IF U.S. WISHED TO AVOID OBLIGATION OF MANDATORY EXTRADITION IN REFUGEE CASES, AND THIS IT SEEMS TO US PRESENTS A DIFFERENT PROBLEM: WE ARE NEGOTIATING IN OUR BILATERAL EXTRADITION TREATIES TO ELIMINATE THE POLITICAL OFFENSE EXCEPTION FOR HIJACKING, BUT THIS IS WITH COUNTRIES WHERE REFUGEE ISSUE DOES NOT EXIST. GENERAL LEGISLATION CREATING EXCEPTION COULD THUS BE TOO BROAD, CUTTING BACK ON THESE BILATERAL EFFORTS, OR REQUIRE SPECIAL EXCEPTION FOR CERTAIN DESIGNATED COUNTRIES, WITH THE ATTENDANT DIFFICULTIES OF PUTTING COUNTRIES ON THE LIST. IN SHORT, WE VIEW ANY SOLUTION REQUIRING IMPLEMENTING LEGISLATION TROUBLESOME.

3. WITH ABOVE CONSIDERATIONS IN MIND, WE BELIEVE BASIC POSTURE U.S. SHOULD BE TO SUPPORT GENERALLY SOVIET PROPOSAL WITHOUT TAKING ANY POSITION OF LEADERSHIP ON IT. U.S. SUPPORT SHOULD CONTINUE TO STRESS ITS MERIT ON NONSUBSTANTIVE GROUNDS, ALONG LINES STATEMENT REPORTED REFTEL B, WITHOUT DWELLING TO ANY EXTENT ON BASIC U.S. POSITION FOR PREFERENCE OF EXTRADITION.

4. FOLLOWING COMPLETION OF INITIAL CONFERENCE DISCUSSIONS
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OF SOVIET PROPOSAL, DEPT WOULD APPRECIATE DELEGATION'S ASSESSMENT (WITHOUT TAKING ANY ACTION) OF POSSIBILITY AND DESIRABILITY OF WORKING PRIVATELY WITH SOVIETS ON WAYS TO OBTAIN MORE SUITABLE DRAFT, AND WHETHER THERE WOULD BE PROBLEMS OF RAISING THIS SUBJECT TO EXPLORE WITH THEM. SUBSTANTIVE CHANGES COULD INCLUDE GENERAL REFUGEE EXCEPTION ADDED TO LAST CLAUSE OF FIRST SENTENCE OF PROPOSED ARTICLE 8, PARA 2, OR PERHAPS LANGUAGE ALONG LINES CUBAN-U.S. AGREEMENT. AMONG THE MODALITIES COULD BE ENTIRELY PRIVATE BILATERAL U.S.-U.S.S.R. DISCUSSIONS AND SOVIET INTRODUCTION OF NEW REVISION LATER IN CONFERENCE; OR ESTABLISHMENT OF A SMALL CONFERENCE WORKING GROUP IN

THIRD WEEK TO STUDY LANGUAGE OF SOVIET PROPOSAL AND
REPORT TO COMMITTEE OF WHOLE EARLY IN FOURTH WEEK.

5. DEPT AGREES WITH DELEGATION'S APPROACH TO GREEK PRO-
POSAL REPORTED REFTEL C. OUR PRIMARY REASON WOULD BE
"MOST IMPORTANT FACT" REFERRED TO PARA. 1, REFTEL C, AND
BELIEVE DEL SHOULD CONCENTRATE ON THIS POINT, NOTING
NUMBER OF ARTICLES IN MONTREAL CONVENTION THAT WOULD HAVE
TO BE CONSIDERED IN EVALUATING PROPOSAL AND PRODUCING
FULL TEXT OF A NEW MONTREAL PROTOCOL. IN ADDITION TO
ARTICLES 1 AND 4, GREEK PROPOSAL AFFECTS, WE BELIEVE
ARTICLE 5 WOULD HAVE TO BE CONSIDERED, PERHAPS ALSO
ARTICLE 2 SINCE DEFINITION OF ACT "DETRIMENTAL TO INTER-
NATIONAL CIVIL AVIATION" WOULD PROBABLY BE REQUIRED, AND
PERHAPS ARTICLES 6, 7, AND 8. THUS GREEK PROPOSAL
POSES INSURMOUNTABLE PRACTICAL DIFFICULTIES IN DEVELOPMENT
OF AN ADEQUATE TEXT WHERE PROPOSAL FIRST SURFACED AT
PLENIPOTENTIARY CONFERENCE WITHOUT PRIOR OPPORTUNITY FOR
PREPARATORY LEGAL COMMITTEE WORK.

6. WE DO NOT FEEL THAT OTHER ARGUMENTS SUGGESTED BY DEL
IN PARA 1, REFTEL C ARE PERSUASIVE, ESPECIALLY IN VIEW
OF STATEMENT REFTEL B, WHICH WE BELIEVE COULD BE APPLI-
CABLE AS WELL TO GREEK PROPOSAL FOR A MONTREAL PROTOCOL.

7. WE BELIEVE DELEGATION SHOULD CONSULT CLOSELY WITH
ISRAEL DEL ABOUT OUR CONCERNS WITH GREEK PROPOSAL, AS
MAY BE OF PARTICULAR INTEREST TO IT IN LIGHT OF ATHENS
AIRPORT EXPERIENCE.
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IM TWO POINTS OF BACKGROUND REGARDING 1971 MONTREAL
DIPLOMATIC CONFERENCE WHICH REJECTED SIMILAR PROPOSALS:
A MAJOR REASON FOR REJECTION WAS TO KEEP ACTS COVERED
BY MONTREAL CONVENTION TO THOSE ABSTRACTLY CONCEIVED OF
AS POSING THE GREATEST OVERALL DANGER TO CIVIL AVIATION
(HENCE, LINKAGE OF ALL MONTREAL CRIMES TO ACTS AGAINST
AIRCRAFT OR AIRCRAFT IN FLIGHT) IN ORDER TO OBTAIN
STRONG HAGUE EXTRADITE-OR-PROSECUTE AND UNIVERSAL JURIS-
DICTION PROVISIONS. IF ARTICLE I COVERED A BROAD NUMBER
OF CRIMES THIS OBJECTIVE WOULD HAVE BEEN JEOPARDIZED. IT
DOES NOT SEEM TO US THIS ARGUMENT IS VALID FOR ROME
CONFERENCE. SECOND, THE MONTREAL CONFERENCE FACED
PROBLEM OF DEFINING THE CUT-OFF POINT FOR APPLICATION OF
THE CONVENTION PROVISIONS, AND LINKAGE TO AIRCRAFT
PROVED A USEFUL TOOL. WITH RESPECT TO ATTACKS ON PASSEN-
GERS ON THE GROUND NO PERSUASIVE ARGUMENT WAS MADE, FOR
EXAMPLE, THAT A DISTINCTION SHOULD BE MADE BETWEEN
ATTACKS AT AIRPORTS, ON AIRLINE BUSES OR LIMOUSINES,
DOWNTOWN TERMINALS, AIRLINE TICKET OFFICES, AT TRAVEL
AGENCIES, AND SO ON. BUT ANY SUCH EXTENSIONS BECAME

SIMPLY UNACCEPTABLY BROAD. IT WAS FELT THAT THE UNIQUE VULNERABILITY OF AIRCRAFT JUSTIFIED THE UNIQUE MONTREAL RULES; AIR LINE PASSENGERS ON THE GROUND WERE NOT VULNERABLE IN ANY UNIQUE SENSE COMPARED WITH ANY OTHER PERSONS. (THESE ATTACKS MIGHT MORE APPROPRIATELY BE COVERED BY GENERAL ANTI-TERRORISM MEASURES.) THIS ARGUMENT IT WOULD APPEAR REMAINS VALID AT ROME.

9. WE NOTE THAT POSITION DESCRIBED REFTEL C IS IN SOME RESPECTS INCONSISTENT WITH STATEMENT REFTEL B. IF DEL WISHES TO DRAW ON ARGUMENTS ADDITIONAL TO POINT OF PRACTICAL DIFFICULTIES, WE RECOMMEND DELEGATION MAKE APPROPRIATE MODIFICATIONS IN POINTS SET OUT PARA 1, REFTEL C. FOR EXAMPLE, LAST SENTENCE PARA 1 NOTES GREEK PROPOSAL COULD IMPEDE MONTREAL RATIFICATIONS, WHICH SHOULD BE COMPARED WITH POINT (1) OF REFTEL B. RUSH

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